

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL No. 200 of 1994****For Approval and Signature:****HONOURABLE MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)**Versus****MORBI MUNICIPALITY - Defendant(s)**

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Appearance :

MS ASMITA PATEL, AGP for Appellant(s) : 1 - 2.

MR NARAD BUCH for NANAVATY ADVOCATES for Defendant(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT**Date : 29/03/2007****ORAL JUDGMENT**

This Appeal under Section 100 of the Code of Civil Procedure has been preferred by the State Government, the defendant in Regular Civil Suit No.343/1981 against the judgment and order dated 9th

March, 1994 passed by the learned Assistant Judge, Morbi in Regular Civil Appeal No.6/1987.

The subject matter of dispute is the land plot no.34 situated within the limits of Morbi Municipality (hereinafter referred to as, **"the Municipality"**) belonging to the State Government. Feeling aggrieved by the action of the State Government in disposing of the suit plot by public auction, the Municipality instituted the above referred Regular Civil Suit No.343/1981 in the Court of learned Civil Judge (S.D.), Morbi. According to the Municipality, by Government Resolution dated 17th January, 1980 the suit land had vested in the Municipality. The State Government had no right to dispose of the suit land by public auction. The Municipality prayed for a declaration that the suit land had vested in the Municipality and that till such issue is decided by the State Government, the State Government be restrained from disposing of the suit plot by public auction.

The suit was contested by the State Government

by written statement Exh.33. The State Government denied that the suit land had vested in the Municipality as alleged. The learned Civil Judge relied upon the Government Resolution dated 17th January, 1980 (Exh.45) and held that by the said Resolution the suit plot had vested in the Municipality. Accordingly, the learned Civil Judge decreed the suit that subject to the inquiry under Section 37(2) of the Bombay Land Revenue Code the suit plot vested in the Municipality. The learned Civil Judge further observed that, **"However, it is made clear that this judgment will not preclude the defendants from holding enquiry U/s.37(2) of Bombay Land Revenue Code and to come to any other conclusion in respect of the suit land."**

Feeling aggrieved, the State Government preferred Regular Civil Appeal No.6/1987 in the Court of learned District Judge, Morbi. The Appeal came to be heard and decided by the learned Assistant Judge. The learned Assistant Judge, by impugned judgment and order dated 9th March, 1994, allowed the Appeal partly. The learned Assistant Judge was pleased to

hold that by its Resolution dated 17th January, 1980, the State Government had vested the suit plot in the Municipality and that no inquiry under Section 37(2) of the Bombay Land Revenue Code was necessitated. In view of the said finding recorded by the Court, the Court below made order as under :-

"Appeal is partly allowed. The judgment and decree passed by the learned Civil Judge (Sr.Dn.) Morvi is set aside to the effect that 'subject to the result of inquiry under Sec.37(2) of the Bombay Land Revenue Code' It is also clarify that there is no need under Sec.37(2) of the Bombay Land Revenue Code. However, State Govt. can take appropriate decision whether suit plot is vested in Municipality or not. Rest of the judgment and decree is hereby confirmed and appeal stands dismissed to that effect. There shall be no order as to cost."

Feeling aggrieved, the State Government has preferred the present Appeal. While admitting the Appeal to final hearing, this Court had framed substantial question of law as under :-

(1)Whether in the facts and circumstances of the case and more particularly in light of Gujarat Government Revenue Department Resolution dated 17/01/1980 at Exhibit-44, the parcel of land bearing Plot No.34 being waste land can be said to have been vested in Nagarpalika ?

I have perused the Government Resolution dated 17th January, 1980 (Exh.45). By the said Resolution the State Government had cancelled the earlier Government Resolution dated 7th September, 1970. I am of the view that both the Courts below have manifestly erred in relying upon the aforesaid Resolution dated 17th January, 1980 and in holding that all open lands including the suit plot vested in the Municipality. In my view, the said Resolution does not suggest for a minute that all lands were vested in the Municipality including the suit plot. The learned Assistant Judge has also erred in holding that an inquiry under Section 37(2) of the Bombay Land Revenue Code was not necessitated.

In above view of the matter, the Appeal is

allowed. The impugned judgment and order dated 9th March, 1994 passed by the learned Assistant Judge, Morbi in Regular Civil Appeal No.6/1987 is quashed and set-aside. The Regular Civil Suit No.343/1981 instituted by the Municipality is allowed to the extent that the State Government shall not dispose of the suit plot no.34 until the inquiry under Section 37(2) of the Bombay Land Revenue Code is conducted by the State Government. The decree passed by the learned Civil Judge stands accordingly modified. The parties shall bear their own cost.

The Morbi Municipality will make necessary application under Section 37(2) of the Bombay Land Revenue Code in respect of the suit plot no.34 within one month from today.

(Ms. R.M.Doshit, J.)

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